

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

**BILL:** SB 1848  
**INTRODUCER:** Senator Detert  
**SUBJECT:** Prisoner's Immigration Status/Verification  
**DATE:** March 13, 2009      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	<b>Favorable</b>
2.	_____	_____	MS	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill requires the staff of any jail or other detention facility to make reasonable efforts to determine the citizenship of any person confined in the facility who is charged with either a felony, driving under the influence, or boating under the influence. If the person is a foreign national, staff is to make reasonable efforts to determine whether the person is lawfully in the United States. If citizenship cannot be determined by documents in the person's possession, a request for verification of immigration status must be requested from the Department of Homeland Security (DHS) within 48 hours of confinement. If DHS verifies that the person is not lawfully present in the United States, staff must notify DHS of the person's confinement and confirm whether a federal immigration detainer has or will be issued.

For purposes of bond consideration, the bill creates a rebuttal presumption that a person who is not lawfully present in the United States is a flight risk.

This bill creates section 907.06 of the Florida Statutes.

**II. Present Situation:**

An alien is a person in the United States who is not a US citizen. Aliens can be removed for reasons of health, criminal status, economic well-being, national security risks and other reasons of public concern that are specifically defined in the federal Immigration and Nationality Act (INA). The INA grants most aliens the right to a removal proceeding before an immigration judge. In a removal hearing, an immigration judge considers evidence presented by both the alien and ICE and renders a decision that can be appealed to the Board of Immigration Appeals. If the immigration judge issues a decision ordering the alien removed from the United States, the

United States Immigration and Customs Enforcement (ICE), a DHS agency, is responsible for enforcing the removal order. In federal Fiscal Year 2007, ICE removed 276,912 illegal aliens, including voluntary removals, from the United States.<sup>1</sup>

There is no nationwide reporting system that can be used to determine the total number of criminal aliens who are in jails and prisons in the United States. However, ICE estimates that 300,000 to 450,000 criminal aliens who are potentially removable are detained each year at federal, state, and local prisons and jails. These include illegal aliens in the United States who are convicted of any crime and lawful permanent residents who are convicted of a removable offense.

### **ICE ACCESS**

ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) encompass a number of services and programs that ICE makes available to local law enforcement agencies. Several of these programs specifically address or are related to the need to identify and remove criminal aliens who are jailed or incarcerated by local and state authorities.

#### ***Secure Communities***

Secure Communities is an ICE ACCESS initiative that focuses federal resources on assisting local communities to identify and remove high-risk criminal aliens who are held in state and local prisons. The focus of the program is sharing of biometric data (such as fingerprint records) between federal, state, and local law enforcement agencies to screen all foreign-born detainees and identify criminal aliens.

A law enforcement agency can check the immigration status of an arrestee or prisoner through ICE's Law Enforcement Support Center (LESC). The LESL received 807,106 requests for information in FY 2008. An inquiry can be made by telephone or electronic access. ICE Criminal Alien Program (CAP) teams respond to local law enforcement agency requests to determine the alienage of individuals arrested for crimes as resources permit. Under CAP, ICE identified and issued charging documents on more than 221,000 incarcerated criminal aliens in Fiscal Year 2008. In Fiscal Year 2008, 350,000 aliens were removed by ICE with nearly 110,000 having criminal histories.

ICE is currently working on distributing technology to link local law enforcement agencies to both FBI and DHS biometric databases. Currently, law enforcement agencies submit an arrested person's fingerprints through FBI databases to access that individual's criminal history as part of the routine booking process. Some agencies now have interoperability so that the fingerprints are also automatically checked against DHS databases to access immigration history information. The automated process notifies ICE when fingerprints match those of an immigration violator, and ICE officers conduct follow-up interviews and take appropriate action.

#### ***Delegation of Immigration Authority***

ICE cross-designates state and local officers to enforce immigration law as authorized through section 287(g) of the Immigration and Nationality Act. An officer who is trained and cross-designated through the 287(g) program can interview and initiate removal proceedings of aliens

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<sup>1</sup> All information concerning ICE is derived from information on the ICE website, [www.ice.gov](http://www.ice.gov), viewed on March 16, 2009.

processed through the officer's detention facility. Local law enforcement agencies without a 287(g) officer must notify ICE of a foreign-born detainee and an ICE officer must conduct an interview to determine the alienage of the suspect and initiate removal proceedings, if appropriate.

Since January 2006, the 287(g) program has been credited with identifying more than 79,000 individuals, mostly in jails, who are suspected of being in the country illegally. Florida currently has 6 law enforcement agencies that participate in the 287(g) program: the Florida Department of Law Enforcement (FDLE), and the sheriff's offices of Bay, Brevard, Collier, Duval, and Manatee counties.

### ***The REPAT Program***

Rapid Removal of Eligible Parolees Accepted for Transfer (Rapid REPAT) provides for early conditional release of certain alien inmates who have been convicted of non-violent offenses if they have a final order of deportation and agree not to return to the United States. The inmate must agree to waive appeal rights of his or her state conviction. In order to enter into a Rapid REPAT agreement with ICE, the state's statutes must provide for revocation of the release and confinement for the remainder of the sentence of any inmate who returns to the United States. In addition, aliens may be prosecuted under federal law that provides up to 20 years confinement for illegally reentering the United States.

### **ALIENS IN FLORIDA PRISONS**

ICE agents working in prison reception centers investigate newly admitted inmates to identify those who may be aliens. On January 31, 2009, Florida prisons held 5,316 confirmed alien inmates.

If ICE has notified DOC that they want to take an alien inmate into custody, the inmate is released into ICE custody when his or her sentence is completed. ICE may refuse to take custody of an alien inmate in some cases, such as when the alien is from a country to which he or she cannot be deported. Most alien inmates who complete their sentences in Florida prisons are released to ICE for further immigration processing, including possible deportation. These inmates are deported promptly after release from prison if they have been ordered out of the country and have no further appeals of their final deportation order.

The chart below shows the number of alien inmates released to ICE from 2000 through 2007:

<b>YEAR OF RELEASE</b>	<b>EXPIRATION OF SENTENCE</b>	<b>COMMUNITY SUPERVISION</b>	<b>TOTAL</b>
2000	433	169	602
2001	730	326	1,056
2002	793	323	1,116
2003	798	383	1,181
2004	752	348	1,100
2005	746	326	1,072
2006	754	354	1,108
2007	799	321	1,120
2008	885	337	1,222
<b>TOTAL</b>	<b>6,690</b>	<b>2,887</b>	<b>9,577</b>

Most confirmed alien inmates (62%) in prison on January 31, 2009, were serving time for violent crimes, 19 percent for drug crimes, 14 percent for a property offense, and 5 percent for other offenses. Nearly one-fourth (22 %) were in prison for murder or manslaughter.

Cuba (34.7% or 1,846 inmates), Mexico (19.7% or 1,049 inmates), and Jamaica (7.8% or 414 inmates) had the most confirmed alien inmates in Florida’s state prisons on January 31, 2009.<sup>2</sup>

**III. Effect of Proposed Changes:**

This bill requires a number of actions to be taken by the staff of any jail or detention facility concerning a person who is confined for any period of time and is charged with either a felony, driving under the influence (s. 316.193, F.S.), or boating under the influence (s. 327.35, F.S.). The staff must:

- Make reasonable efforts to determine the citizenship of the person.
- If the person is a foreign national, make reasonable efforts to determine whether the person is lawfully in the United States.
- If the person’s citizenship cannot be determined by documents in his or her possession, request verification of the person’s immigration status from the Department of Homeland Security (DHS) within 48 hours of confinement.
- If DHS verifies that the person is not lawfully present in the United States, notify DHS of the person’s confinement and confirm whether a federal immigration detainer has or will be issued.

The bill provides that it must be construed consistent with federal law. This recognizes the fact that immigration enforcement is a federal function. State law enforcement officers may not go beyond seeking information and assistance from ICE unless they are trained and cross-designated under the 287(g) program and acting under ICE’s supervision. Based upon current ICE procedures, it appears that a state or local law enforcement agency could responsibly meet

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<sup>2</sup> All population data and statistics were provided by DOC on February 16, 2009, based on historical data and the inmate population as of January 31, 2009.

the bill's requirements by making an inquiry to ICE's Law Enforcement Support Center and notifying ICE if an alien who is unlawfully present in the United States is detained an alien for state criminal purposes.

The bill establishes a rebuttable presumption that the person is a flight risk if DHS verifies that he or she is a foreign national who is not lawfully present in the United States. This presumption would be considered in any decision in establishing conditions of bond. Because the presumption is rebuttable, it could be overcome by evidence that the person is not a flight risk, such as having ties to the local community.

There is nothing in the bill authorizing detention of a person for the purpose of determining his or her immigration status. In the absence of a legal detainer from ICE, a person cannot be held longer than is required due to state criminal charges or another lawful reason such as a detainer from another jurisdiction. For example, a first appearance before a judge is required within 24 hours of arrest, and it would be unlawful to delay the first appearance in order to receive confirmation of alien or immigrant status from ICE.

The bill authorizes FDLE to adopt rules to administer its provisions. It appears that the purpose of this requirement is to ensure that a state or local law enforcement officer who is not knowledgeable in federal immigration law does not exceed his or her permissible authority in dealing with an arrested alien. However, FDLE notes that it does not regulate local or state correctional facilities and that it would not be appropriate for it to be charged with responsibility for rulemaking.<sup>3</sup>

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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<sup>3</sup> FDLE Analysis of Senate Bill 1848, dated March 12, 2009.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.